

Filed: January 13, 2007
10:50 a.m.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

LISA BLACK,

Plaintiff

v.

JIM BREWER, et al.,

Defendants

Civil Action No. 05-0038

ORDER DENYING
MOTION TO AMEND OR,
IN THE ALTERNATIVE, TO
RECONSIDER GRANT OF
PARTIAL SUMMARY JUDGMENT
IN FAVOR OF DEFENDANTS

THE COURT has before it plaintiff's motion for leave to amend the complaint or, in the alternative, for the court to reconsider its order granting partial summary judgment in favor of defendants on five of the her seven causes of action.

Due to the imminence of the trial date, and to conserve the resources of the court and the parties, the court will decide the motion without the necessity of a filing by defendants or a hearing.

1 This lawsuit was filed on November 18, 2005. The complaint was never
2 amended.

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4 The case management scheduling order was entered on February 8, 2006, and
5 trial was set to begin on February 5, 2007. At plaintiff's request, and to accommodate
6 her travel schedule, the trial date was moved, by order dated May 3, 2006, to February
7 20, 2007. Although the court has accommodated the parties by entering orders
8 granting modest time extensions as to certain deadlines, the trial date has not again
9 been extended. Further, at the last status/settlement conference, all parties agreed
10 that this matter would not be settled and that it would definitely go to trial. At that
11 point, due to the court's own schedule, it became necessary to contact the Chief
12 Judge of the U.S. Court of Appeals for the Ninth Circuit to ask her to appoint a judge
13 to travel to Saipan to hear this case. She did so, and the judge appointed has changed
14 his own calendar in Los Angeles to assist this court.

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18 In her complaint, plaintiff averred certain facts in regards to her knowledge of
19 a letter that was written regarding a fellow employee. In short, she denied drafting,
20 circulating, and encouraging people to sign the letter. At some point during
21 discovery, plaintiff changed her story and admitted her participation in the drafting of
22 the letter. She did not thereafter attempt to amend her complaint until the motion
23 presently before the court was filed, which was *after* summary judgment had been
24 entered against her.
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1 The court denies plaintiff's motion to amend and it will not reconsider its
2 order granting partial summary judgment in favor of defendants.

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4 As an initial matter, this motion was not preceded by a motion to shorten time,
5 as provided by the local rules. Were the court to hear this motion on its regular
6 motion calendar, it would not come before the court until February 15, 2007, five
7 days before the trial is set to begin.

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9 Plaintiff's complaint controls this litigation. She made certain allegations that
10 were based in large measure on knowledge that was almost exclusively hers. She,
11 more than anyone, had responsibility for sketching the broad outlines of her lawsuit.
12 Defendants, in turn were entitled to rely on the unchanged allegations in plaintiff's
13 complaint when they filed their motion for summary judgment. It was plaintiff's duty
14 to timely move to amend her complaint to reflect her current version of events
15 immediately upon the revelation or admission that the averments in her complaint
16 were false.

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19 Post-summary judgment motions to amend are extremely disfavored. *See*
20 Summary Judgment: Federal Law and Practice § 7.10, (3rd ed. 2006) (A motion to
21 amend introduces "a moving target."). The reasons for this are obvious. First, the
22 non-moving party cannot be allowed to create a genuine issue of material fact by
23 contradicting *her own* earlier factual contentions, whether in the complaint or
24 discovery. *See, e.g., Coleman v. Quaker Oats Co.*, 232 F.3d 1271 (9th Cir. 2000); U.A.
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1 Local 343 v. Nor-Cal Plumbing, 48 F.3d 1465 (9th Cir. 1994); In re Coordinated
2 Pretrial Proceedings in Petroleum Products Anti-Trust Litigation, 906 F.2d 432 (9th
3 Cir. 1990); Radobenko v. Automated Equipment Corp., 520 F.2d 540 (9th Cir. 1975).

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5 It is not only appropriate but it is required that the court consider the pleadings, as
6 well as other matters, when deciding a summary judgment motion: "The judgment
7 shall be rendered forthwith if the pleadings . . . show that there is no genuine issue as
8 to any material fact and that the moving party is entitled to a judgment as a matter of
9 law." Fed. R. Civ. P. 56(c). Second, to grant this motion would allow plaintiff to
10 escape summary judgment by *now* changing the allegations in her complaint ---
11 allegations to which she remained wedded and which therefore have continued to
12 define the parameters of her claims---until judgment is entered. Third, the summary
13 judgment motion in this case was precisely of the kind anticipated by Federal Rule of
14 Civil Procedure 56 ("Rule 56 "): a party makes material factual assertions, which the
15 opposing party shows are not supported or are contradicted by the party's earlier
16 statements, resulting in summary judgment. To grant plaintiff's motion would be to
17 entirely eviscerate Rule 56, a result which this court is unwilling to endorse or allow.

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19 For the reasons stated above, the court likewise denies plaintiff's motion for
20 reconsideration, *i.e.* to alter or amend the judgment, brought pursuant to Federal Rule
21 of Civil Procedure 59.
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1 In order to allow the parties to prepare for trial, this court will not entertain
2 further motions (other than proper motions *in limine*), including a motion brought
3 pursuant to 28 U.S.C. § 1292.
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5 IT IS SO ORDERED.

6 DATED this 13th day of January, 2007.
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11 ALEX R. MUNSON
12 Judge
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